

CHINA AND INTERVENTION: THEORY AND PRACTICE*

JEROME ALAN COHEN†

As a Chinese proverb says: 'Do not onto others what you yourself do not desire.' We are against outside interference; how could we want to interfere in the internal affairs of others? Chou En-lai¹

We must give active support to the national independence liberation movement in countries in Asia, Africa and Latin America as well as to the peace movement and to just struggles in all countries throughout the world. Mao Tse-tung²

Now that the entry of the People's Republic of China (PRC) into the world community is almost complete, both diplomats and students of international relations have become aware of the importance of ascertaining Peking's views of international law.³ One of the most fundamental principles of international law is the duty of states to refrain from unlawful intervention in the affairs of other states. In the United Nations, where it now represents China, the PRC will increasingly be called upon to give concrete meaning to the abstractions of the Charter such as article 2(4)'s prohibition of "the threat or use of force against the territorial integrity or political independence of any state," and article 2(7)'s prohibition of UN intervention "in matters which are essentially within the domestic jurisdiction of any state." Also, in establishing bilateral diplomatic relations with many states since 1970, the PRC has promised on a reciprocal basis to respect the principle of non-intervention as well as the related principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, equality and mutual benefit, and

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† Professor of Law, Harvard University. A.B. 1951, LL.B. 1955, Yale University.

¹ Text of Premier Chou En-Lai's Supplementary Speech at Asian-African Conference, U.S. CONSULATE GENERAL, HONG KONG, SURVEY OF THE CHINA MAINLAND PRESS, Apr. 20, 1955, at 5-8.

² Mao Tse-tung, *Report to the Eighth National Congress of the Chinese Communist Party*, 1956, reprinted in 4 chung-hua jen-min kung-ho-kuo fa-kuei hui-pen 3 (1956) [hereinafter cited as FKHP].

³ This interest is beginning to be reflected in legal literature. See, e.g., CHINA'S PRACTICE OF INTERNATIONAL LAW: SOME CASE STUDIES (J. Cohen ed. 1972); J. HSIUNG, LAW AND POLICY IN CHINA'S FOREIGN RELATIONS (1972); HUNGDAH CHIU, THE PEOPLE'S REPUBLIC OF CHINA AND THE LAW OF TREATIES (1972); D. JOHNSTON & HUNGDAH CHIU, AGREEMENTS OF THE PEOPLE'S REPUBLIC OF CHINA, 1949-1967: A CALENDAR (1968); LAW IN CHINESE FOREIGN POLICY: COMMUNIST CHINA AND SELECTED PROBLEMS OF INTERNATIONAL LAW (S.C. Leng & H. Chiu eds. 1972); L. LEE, CHINA AND INTERNATIONAL AGREEMENTS (1969).

peaceful coexistence.⁴ And the landmark Shanghai Communique, presumably the first step toward the normalization of relations between the PRC and the United States, pledges Peking and Washington to non-intervention and the other four principles that comprise the famous "five principles of peaceful coexistence."⁵

"Intervention" is, of course, a murky concept. That states influence each other in many ways and to many degrees is a fact of life. But the difficulty has been to determine which of the many forms and degrees of factual intervention may be said to constitute intervention in the legal sense. When using the term "intervention" care must be exercised to distinguish between factual intervention and the legal conclusion that a particular intervention violates authoritative community expectations about permissible international conduct.⁶ In this essay, unless the context indicates otherwise, the term is used in the legal sense.

Unfortunately, the legal concept itself is a slippery vehicle. As many writers have pointed out, neither states nor jurists have succeeded in endowing it with an agreed-upon content, and state practice has only added to the confusion.⁷ A traditional definition preferred by many publicists confines the term to dictatorial interference by a state in the internal or external affairs of another state, usually involving a threat or use of military force.⁸ Although writers and states generally agree that such interference normally violates state sovereignty and international law, in practice states have frequently failed to refrain from intervention even in this limited sense, not to mention coercive interactions of an economic or ideological nature. This has spurred the search for exceptions to the rule of non-intervention. As one authoritative appraisal has summarized the situation:

There has been little agreement as to the special circumstances which, exceptionally, may justify intervention. Among such circumstances suggested by various writers have been invitation or consent by the state concerned, threats to the safety of nationals of the intervening state, previous or threat-

⁴ See, e.g., Text of the Chinese-Japanese Accord Signed by Chou and Tanaka, N.Y. Times, Sept. 30, 1972, at 12, col. 4. For discussion of these principles, which the PRC has popularized as the "five principles of peaceful coexistence," see text accompanying notes 27-29 *infra*.

⁵ See Text of US-Chinese Communique, N.Y. Times, Feb. 28, 1972, at 16, col. 3.

⁶ For a review of the authorities and analysis of the terminological and legal uncertainties, see Moore, *The Control of Foreign Intervention in Internal Conflict*, 9 VA. J. INT'L L. 205, 212 et seq. (1969).

⁷ See, e.g., A. THOMAS & A. THOMAS, NON-INTERVENTION 67 (1956).

⁸ See, e.g., *id.* 68; J. BRIERLY, LAW OF NATIONS 402 (6th ed. Waldock 1963); 1 C. HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 245-47 (2d ed. rev. 1945); 1 L. OPPENHEIM, INTERNATIONAL LAW 305 (8th ed. H. Lauterpacht 1955).

ened unlawful interventions by the other state, chronic disregard by a state of its international obligations, the needs of self-defense or self-preservation of the intervening state, and collective decision to put an end to inhumane treatment by a government of all or some of its own nationals (humanitarian intervention). The legal sufficiency of most of these categories of circumstances as justification for intervention has been challenged by other writers. The legality of extending armed assistance to a government at its request against its domestic opponents remains highly controversial and may not be regarded as "intervention" under some definitions. The right of intervention in exceptional circumstances, if it ever existed, has been further restricted by the prohibitions on the threat or use of force contained in the United Nations Charter. It is generally conceded, however, that collective intervention pursuant to the Charter is lawful.⁹

The law-making activities of the United Nations have done little to clarify the situation. For example, on the one hand, the General Assembly has condemned not only armed intervention but also "all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements" and has refused to recognize "for any reason whatever" the existence of special circumstances that would justify exceptions to this broad, vague declaration;¹⁰ on the other hand, other Assembly resolutions have recommended that all states provide "moral and material assistance" to insurgent movements that seek to liberate from colonialism the peoples of African territories under Portuguese administration and of South-West Africa.¹¹ The behavior of individual states has often been characterized by a similar ambivalence toward intervention.¹²

What is the PRC's understanding of "intervention"? How has it applied the concept? Does Peking's practice square with its theory? How does the Chinese record compare with that of other states? To what extent does it reflect autochthonous Chinese experience? What have PRC scholars and ideologists written on the subject? In sum, what is Peking's endorsement of the principle of non-intervention likely to be worth?

This introductory essay surveys these important but seldom treated questions of new China's attitude toward international law. After first sketching some historical background, it will examine the

⁹ W. FRIEDMANN, O. LISSITZYN & R. PUGH, *INTERNATIONAL LAW* 971 (1969).

¹⁰ Declaration on the Inadvisability of Intervention Into the Domestic Affairs of States, G.A. Res. 2131, 20 U.N. GAOR Supp. 14, at 11-12, U.N. Doc. A/6220 (1965).

¹¹ See the resolutions quoted and discussed in Moore, *supra* note 6, at 267.

¹² See *id.* 243.

concept of intervention articulated in PRC legal literature, the applications of the concept by the government, press and scholars of China, Peking's view regarding the applicability of non-intervention to relations among socialist states, and its efforts to reconcile its advocacy of non-intervention with its attempts to influence events in other countries through a variety of means including support for selected "wars of national liberation."

I. HISTORICAL BACKGROUND

Chinese leaders have been concerned with the rules governing intervention in internal affairs almost since the beginning of recorded time. From the eighth to the third centuries B.C., during the latter part of China's pre-imperial history, there existed in the present north-central part of China a number of feudal states which, although nominally vassals of the Chou dynasty, largely functioned as independent entities. These feudal states developed a rough system of commonly accepted norms, institutions, and processes for the conduct of their relations. Some aspects of that system, like certain aspects of the system that regulated the interaction of the city-states of ancient Greece, bear a striking similarity to the international law that emerged from the multi-state system of fifteenth and sixteenth century Europe. The rules relating to intervention provide a case in point.

In pre-imperial China it was generally accepted that each of the feudal states had a right to manage its own affairs and had a corresponding duty not to interfere in the affairs of other feudal states.¹³ Nevertheless, this general principle was frequently honored in the breach, and there developed a variety of rationalizations for departures from the norm. Strong, self-righteous leaders who were attracted to intervention as a means of seeking various ends purported to find justification in prevailing ethical doctrines that preached the desirability of the less worthy submitting to the virtuous. Moreover, exceptions to the rule of non-intervention came to be recognized during China's pre-imperial era. The most obvious of these authorized intervention if necessary to the self-preservation of the intervening state. Another frequently-invoked exception permitted intervention against a ruler who oppressed his own people. Also popular was the claim that intervention was a necessary sanction against a feudal state that had failed to carry out its obligations under a treaty. And in many instances one feudal state used military means to install a friendly sovereign on the throne of a neighbor.

¹³ This paragraph is based on Te-hsu Ch'eng, *International Law in Early China (1122-249 B.C.)*, 11 CHINESE SOCIAL & POL. SCI. REV. 44-46 (1927).

The establishment of the Chinese empire and its gradual expansion over a vast land mass and population required continuing attention to the manner in which China would deal with neighboring peoples who were not under its direct control. Throughout most of two millennia from the founding of the empire in 221 B.C. until the onslaught of Western military expeditions in the nineteenth century, the Chinese emperor served as overlord of what came to be known as the tribute system. This was a rather loose hierarchy of tributary peoples in which status was relative to the degree of acceptance of Confucian cultural, ethical, political, and social norms and of China's writing system and agricultural practices. An elaborate series of rituals governed contacts between the "Son of Heaven" in the Chinese capital and lesser rulers. These lesser rulers acquired legitimacy, at least in Chinese eyes, only after investiture by the Chinese emperor and periodically sent emissaries to pay tribute to him and to receive magnanimous gifts from him in return. The hierarchical organization and protocol of the Sinocentric East Asian community were designed to acknowledge not only the preeminent power of China, whose name means "Central Realm," but also its moral superiority as the embodiment of virtues deserving of universal application.¹⁴

Underlying the imperial tribute system was the theory that China could "intervene whenever and wherever she judged it necessary because the Chinese emperor was responsible for all the peoples under Heaven and because their rulers were viewed as his appointed representatives."¹⁵ This normally latent right of intervention was occasionally exercised. For example, in 1788 China sent a military expedition to Vietnam to restore to the throne the Lê family, who, until a recent rebellion, had been loyal tributaries of the empire for over a century. A scholarly analysis has concluded:

The relationship was not between two equal states. There was no doubt in anyone's mind that China was the superior and the tributary state the inferior. The Vietnamese Kings clearly realized that they had to acknowledge China's suzerainty and become tributaries in order to avoid active intervention by China in their internal affairs It was in the interest of the Vietnamese Kings to surrender part of their sovereignty in return for the assurance that in case of rebellion they would be protected by China and that in time of

¹⁴ See, e.g., *THE CHINESE WORLD ORDER* (J.K. Fairbank ed. 1968) (especially Fairbank, *A Preliminary Framework*, in *id.* 1). For general historical perspective, see, e.g., J. FAIRBANK, E. REISCHAUER & A. CRAIG, *EAST ASIA, THE MODERN TRANSFORMATION* (1965); E. REISCHAUER & J. FAIRBANK, *EAST ASIA, THE GREAT TRADITION* (1960).

¹⁵ Truong Buu Lam, *Intervention Versus Tribute In Sino-Vietnamese Relations, 1788-1790*, in *THE CHINESE WORLD ORDER* 165, 179 (J.K. Fairbank ed. 1968).

internal peace they would not be conquered and directly administered by China.¹⁶

Western force rudely awakened China to the fact that, beyond the tributary peoples of East Asia, lay powerful nation-states with a profoundly different view of society, government, and international relations. In the nineteenth century, a series of wars humiliated China and shattered its millennial isolation. The Western "barbarians" were bent on opening up China and compelling it to participate in the Western state system. The onerous and comprehensive restraints that they and later their emulators—the Japanese—imposed upon China transformed that proud and long powerful country into a semi-colony. Besides losing substantial portions of its territory, as well as control over its tributary states, China was made to suffer an elaborate structure of extraterritorial privileges, inequitable tariff restrictions, "leased territories," foreign concessions and settlements, foreign armed forces, and foreign railway, postal, customs, wireless, and other administrative networks.¹⁷

In reaction to this unhappy experience, modern Chinese patriots of all political persuasions have sought to liberate their country from foreign domination in order, in the words of Sun Yat-sen, "to obtain the rights of a civilized state" and "to place China in a respectable place in international society."¹⁸ In these circumstances they have understandably taken an active interest in the rules of intervention that the world community purports to apply. Prior to its ouster from the UN in 1971, the Republic of China on Taiwan participated in both multilateral and bilateral efforts to strengthen support for the principle of non-intervention.¹⁹

The leaders of the People's Republic of China have been so sensitive to the history of foreign domination that they have manifested an almost obsessive concern with vindicating and preserving national sovereignty.²⁰ Actually, although its ranks have recently been decimated by internecine strife and the ravages of time, it is still true

¹⁶ *Id.* 178.

¹⁷ See, e.g., W. TUNG, *CHINA AND THE FOREIGN POWERS* (1970).

¹⁸ *IMPORTANT DOCUMENTS RELATING TO CHINA'S REVOLUTION*, 1912, at 67-68 (Shanghai ed. 1912).

¹⁹ See, e.g., 20 U.N. GAOR, 1st Comm. 267, U.N. Doc. A/c.1/SR1398 (1965) (statement of Taiwan government supporting the Declaration on the Inadvisability of Intervention Into the Domestic Affairs of States, *supra* note 10); Treaty of Friendship and Alliance Between the Republic of China and the USSR, Aug. 14, 1945, art. V, *TREATIES BETWEEN THE REPUBLIC OF CHINA AND FOREIGN STATES (1927-1957)* 506 (edited by the Ministry of Foreign Affairs of the Republic of China, Taipei 1958).

²⁰ See, e.g., Cohen, *Chinese Attitudes Toward International Law—and Our Own*, in *CONTEMPORARY CHINESE LAW: RESEARCH PROBLEMS AND PERSPECTIVES* 282, 284-85 (J. Cohen ed. 1970).

that to the present Chinese Communist elite—and especially to Mao Tse-tung, Chou En-lai and other senior leaders—foreign domination is not “history” but the reality with which they have had to struggle continuously for a half-century, first as revolutionaries and later as rulers.

For example, Communist victory in the civil conflict that was renewed shortly after the end of World War II only briefly terminated American military aid to the overthrown Nationalist government. When the Korean conflict broke out, the United States resumed military aid to Chiang Kai-shek's remnant forces on Taiwan, used the Seventh Fleet to prevent Communist reintegration of the island with the Chinese mainland, and subsequently concluded a military alliance with the Nationalists that continues to this day.²¹ Taiwan has not been the PRC's sole experience with foreign interference. Peking bitterly resented the covert efforts of other governments to support the 1959 revolt in Tibet as well as their overt condemnation of China for suppressing it.²² Peking also appeared to interpret American participation in the Korean conflict as ultimately directed toward intervention in China.²³ And it has had to protect itself against the perennial problem of foreign-sponsored espionage and sabotage.²⁴

Nor has bourgeois imperialism been Peking's only source of concern. Even in the ostensibly friendly days of the early 1950's, the PRC had to apply considerable and persistent pressure against the Soviet Union in order to liquidate certain naval bases and economic concessions that the USSR sought to retain in China and to eliminate Soviet interference in affairs of the Chinese Communist Party and government.²⁵ And during the past decade Peking has accused Moscow of seeking to stir up rebellion among minority nationalities who live on the Chinese side of the Sino-Soviet border, of continuing its interference in Chinese politics, of engaging in overt acts of aggression against Chinese territory, and of planning to turn China into another Czechoslovakia.²⁶

²¹ See, e.g., Cohen, *Recognizing China*, FOREIGN AFFAIRS, Oct., 1971, at 30, 35-36.

²² See, e.g., text accompanying notes 35-38 *infra*; H. HINTON, COMMUNIST CHINA IN WORLD POLITICS 285-89 (1966).

²³ For authoritative interpretation of these events, see T. TSOU, AMERICA'S FAILURE IN CHINA, 1941-1950, at 555-91 (1963); A. WHYTING, CHINA CROSSES THE YALU 151-62 (1960).

²⁴ See, e.g., Judgment of Military Tribunal on U.S. Spies in the Arnold-Baumer Espionage Case, PEOPLE'S CHINA (Supp.), Dec. 16, 1954, at 3-5; Judgment of Military Tribunal on U.S. Spies in the Downey-Fecteau Case, *id.* 6-8. See also Cohen, *Chinese Law and Sino-American Trade*, in CHINA TRADE PROSPECTS AND U.S. POLICY 145-46 (A. Eckstein ed. 1971).

²⁵ See, e.g., J. HSIUNG, *supra* note 3, at 54-55.

²⁶ See text preceding note 69 *infra*. See also Lin Piao, *Report to the Ninth*

II. ESPOUSAL OF NON-INTERVENTION

This abiding preoccupation with foreign intervention has led the Chinese government to endorse the principle of non-intervention in international law. Indeed, "mutual non-interference in each other's internal affairs" became the third of Peking's five principles of peaceful coexistence.²⁷ Almost one year after the Sino-Indian agreement of 1954 articulated the "five principles," they were elaborated into ten principles by the Asian-African Conference that was held in Bandung. The Joint Communiqué issued by the PRC and twenty-eight other states not only called for "abstention from intervention or interference in the internal affairs of another country," but also urged "abstention by any country from exerting pressures on other countries" and "refraining from acts or threats of aggression or the use of force against the territorial integrity or political independence of any country." The Joint Communiqué pledged "Respect for the right of each nation to defend itself, singly or collectively, in conformity with the Charter of the United Nations," but it declared that collective defense arrangements should not "serve the particular interests of any of the big powers."²⁸ With a number of Afro-Asian states the PRC subsequently concluded bilateral friendship treaties that explicitly incorporated the "five principles," and some treaties also referred to the "ten principles" laid down at Bandung.²⁹

Although the quantity of scholarship on international law produced in the PRC has not rivaled the substantial body of literature developed in the Soviet Union, a number of Chinese essays have dealt with intervention. A few have discussed the subject in an overall way, while others have focused on specific incidents.

In elucidating the meaning of "peaceful coexistence" shortly after the Bandung conference, Professor Chou Keng-sheng, one of China's leading legal commentators, acknowledged that the principle of non-intervention is part of the traditional fabric of international law and stated that article 2(7) of the United Nations Charter reinforces that

National Congress of the Communist Party of China, in *PEKING REVIEW* (Special Issue), Apr. 28, 1969, at 28.

²⁷ See Agreement Between India and China on Trade and Intercourse Between Tibet Region of China and India, Apr. 29, 1954, 299 U.N.T.S. 57, 70 (1958).

²⁸ Joint Communiqué of Bandung Conference, U.S. CONSULATE GENERAL, HONG KONG, *SURVEY OF THE CHINA MAINLAND PRESS*, Apr. 23, 1955, at 11, 16-17.

²⁹ See, e.g., Treaty of Friendship Between the People's Republic of China and the Republic of Ghana, Aug. 18, 1961, reprinted in *Chung-hua jen-min kung-ho-kuo yu-hao t'iao-yüeh chi* [Collection of Friendship Treaties Concluded by the People's Republic of China] 63 (edited by the Ministry of Foreign Affairs of the People's Republic of China, Peking 1965).

principle.³⁰ Following the lead of Soviet scholars, who exercised major influence over Chinese writing on international law in the 1950's, Professor Chou inveighed against taking a formal, mechanical view of what constitutes intervention. He cited Stalin for the proposition that intervention can take many forms—military, economic, and subversive. Sometimes, he noted, intervention parades in the garb of “non-intervention,” as in the case of the British, French, and other Western powers’ “indirect aggression” through refusal to interfere in the Spanish Civil War, thereby allegedly causing the overthrow of the Republican Government. More recently, he maintained, the Western imperialists, out of ostensible respect for the principle of non-interference in internal affairs, wrongfully refused to submit for discussion at the UN “questions of racial conflict and national self-determination which obviously possess international importance.” As examples of such distortions of the UN Charter, he mentioned the questions of the Union of South Africa’s treatment of its Indian population and France’s control of Algeria.³¹

In a comprehensive article written in 1960, after the UN General Assembly had condemned China’s suppression of the 1959 revolt in Tibet, scholar Yi Hsin did not bemoan the UN’s failure to act in cases of racial discrimination and suppression of self-determination. Along the lines set forth in Soviet scholarship, he analyzed the historical evolution of the rule of non-intervention, and classified and criticized the exceptions to which bourgeois international law has subjected it. Among these he included resort to intervention in the guise of non-intervention. Yet what he emphasized was the great extent to which imperialism interfered in internal affairs when it should not have, rather than the extent to which it failed to act when it should have.

By way of illustration, Yi referred to many concrete cases, using China’s experience wherever possible. For example, he stated:

The people of our country have personally experienced the intervention and aggression of imperialist countries on the pretext of protecting their nationals, and there are indeed too many cases to enumerate. During the period of the Chinese Revolution, when the Northern Expedition Forces captured Nanking in 1927, in order to obstruct the Chinese Revolution

³⁰ U.N. CHARTER art. 2(7) provides in part: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . .”

³¹ Chou Keng-sheng, *The Principle of Peaceful Coexistence From the Viewpoint of International Law*, 1955(6) CHENG-FA YEN-CHIU 37, 41 [hereinafter cited as POLITICAL-LEGAL RESEARCH].

through the use of arms, the English, American and other imperialists ordered their warships to shell Nanking on the ground that their nationals and consulates were 'encroached upon and harmed by rioters.' As a result, more than two thousand Chinese soldiers and civilians were wounded or killed and the loss of houses and property was considerable. Immediately afterwards, the United States, England, Japan, France, and Italy further discussed plans for sending troops to intervene and lodged an ultimatum with the National Government in Wuhan, demanding the prosecution of criminals, apology, and indemnity and making other unreasonable demands. In 1928, when the Northern Expedition Forces entered Tsinan, Japan even declared that in order to 'protect Japan's rights and interests' it was sending troops to Shantung. On May 3, Japan massacred more than three thousand Chinese soldiers and civilians and cruelly murdered the Chinese special diplomatic commissioner, Ts'ai Kung-shih.³²

With respect to intervention in order to quell revolution that threatens imperialist interests in a country, Yi claimed that the United States had "illegally occupied our territory, Taiwan, by force of arms . . . on the pretext of a 'collective self-defense.'" ³³ To demonstrate intervention in the interest of maintaining "the balance of power," he recalled how Russia, Germany and France forced Japan to return the Liaotung peninsula to China in 1895 and how in 1899 the United States demanded an "open door" policy in China.³⁴

To illustrate the "class character" of the "humanitarian intervention" practiced by the imperialist states, Yi Hsin referred to the then recent concern over Tibet.

The term 'humanity' professed in bourgeois international law means bourgeois humanity. Imperialism considers as 'inhumane' those countries in which the proletariat has political power and establishes a dictatorship over the reactionary forces. It considers as 'inhumane' the punishment and suppression imposed by the people of a country upon conspiratorial elements who engage in rebellion and subversive activities supported by imperialism. . . . When a country adopts certain progressive measures in internal affairs which reflect the demands of the people but which are unfavorable to the minority, the originally privileged class, imperialism also considers it 'inhumane.' In all these cases, imperialism considers it permissible to intervene. Moreover, in order to achieve its object, which cannot be publicly announced, im-

³² Yi Hsin, *What Does Bourgeois International Law Explain About the Question of Intervention?*, 4 Kuo-chi wen-t'i yen-chiu [Research on International Problems] 47, 49 (1960).

³³ *Id.* 50.

³⁴ *Id.*

perialism can even fabricate the pretext of 'humanitarianism' in order to intervene. The Chinese suppression of the rebellion of the upper stratum of the Tibetan reactionary clique supported by reactionaries of foreign countries, and the democratic reform of the Tibet region, enabling the liberation of a million or more Tibetan compatriots from the dark and cruel serf system, brought a shout from imperialism, which calumniated the measures as 'violations of human rights' and 'genocide.' Obviously, behind all the shouting is an eager conspiracy of intervention.³⁵

According to Yi Hsin, the General Assembly's "so-called resolution on 'the Tibet question'" was the product of American manipulation of the principles of non-intervention embodied in article 2(7) of the UN Charter. He lashed out against bourgeois jurists who "follow their master and do their best to bark like dogs who hear sounds and see shadows."³⁶ He maintained that Lauterpacht's *Oppenheim*, for example, had sought to argue that since "human rights and fundamental freedoms have become a persistent feature of the Charter they may have ceased to be a matter which is essentially within the domestic jurisdiction of States."³⁷ And, he claimed, other scholars had put themselves in the service of organizations such as "the so-called 'International Commission of Jurists,'" which had issued a report on the Tibet question that was "full of rumors and slander for the purpose of fabricating an international legal basis for intervention"³⁸

III. APPLICATIONS OF THE PRINCIPLE

Like their Soviet counterparts, most Chinese writers have been reluctant to engage in close analysis of the complex issues implicit in the law of intervention.³⁹ They too have preferred to discuss specific incidents after the fact rather than to develop a rationale for principled decisionmaking that might constrict their government's freedom of action or produce an embarrassing and personally hazardous disagreement between scholar and government. This became clear by the late 1950's, as a brief comparison of Chinese views on the cases of Hungary and Lebanon suggests.

Following the lead of the PRC and the official voice of the Chinese Communist Party, the *People's Daily*, Chinese specialists in interna-

³⁵ *Id.*

³⁶ *Id.* 51.

³⁷ *Id.*, quoting 1 L. OPPENHEIM, INTERNATIONAL LAW 280 (7th ed. H. Lauterpacht 1948).

³⁸ Yi Hsin, *supra* note 32, at 50-51.

³⁹ For the views of Soviet writers, see, e.g., Butler, *Soviet Attitudes Toward Intervention*, to be published in LAW AND CIVIL WAR IN THE MODERN WORLD (J. Moore ed.).

tional law supported the Soviet Union's military suppression of the 1956 Hungarian revolution on the ground that the USSR had acted at the request of the lawful Hungarian government. As Ch'en T'i-ch'iang, one of the most prominent scholars, put it: "Acts of intervention in a state with the consent of the government of that state cannot be considered [illegal] intervention."⁴⁰ Other scholars shared this rationale.⁴¹ Two years later, however, after the PRC condemned the entry of American forces into Lebanon as "armed intervention in the Lebanon's [*sic*] internal affairs,"⁴² Chinese scholars dutifully agreed, despite the fact that the President of Lebanon had requested the entry of American forces. Citing Khrushchev as authority, Professor Chou Keng-sheng, who was frequently called upon to justify the Chinese Government's position in international legal questions,⁴³ handled the problem this way:

The traitorous government of Chamoun, opposed by the people of Lebanon, had to appeal to a foreign state to dispatch forces to maintain its shaky rule and therefore it obviously cannot be considered as a government representing the Lebanese people. . . . As a matter of fact, the speaker of the Lebanese Parliament had called on the United Nations to request the United States to withdraw its forces; this was, on behalf of the Lebanese people, a repudiation of Chamoun's appeal. Moreover, Chamoun's appeal itself is illegal, because to invite the colonialists to engage in armed intervention in the internal affairs of a state is to betray the independence of that state.⁴⁴

Indeed, in dealing with the Hungarian case, the *People's Daily*, unlike the scholars who discussed the case, had taken care to emphasize that Soviet actions were "entirely just" not only because they had been taken "in conformity with the Warsaw Treaty, and at the request of the Hungarian Government to assist in restoring order, but also

⁴⁰ Ch'en T'i-ch'iang, *The Hungarian Incident and the Principle of Non-Intervention*, Kuang-ming jih-pao [Enlightenment Daily], Apr. 5, 1957, at 1; cf. *Refuting the Loud Western Outcry Over the "Hungarian Issue,"* Jen-min jih-pao [hereinafter cited as *People's Daily*], Nov. 14, 1956, at 1, col. 1.

⁴¹ See Sun Nan, *What is the Principle of Non-intervention in Other Nations' Internal Affairs?*, 74 EXTRACTS FROM CHINA MAINLAND MAGAZINES, Mar. 18, 1957, at 1-3; Tien Pao-shen, *Is the Dispatch of [the] Soviet Army to Hungary an "Intervention" in Other Nations' Internal Affairs?*, 76 EXTRACTS FROM CHINA MAINLAND MAGAZINES, Apr. 1, 1957, at 1-3.

⁴² *The Chinese Government Demands Withdrawal of U.S. Forces From Lebanon, Withdrawal of British Forces from Jordan*, PEKING REVIEW, Jul. 22, 1958, at 7.

⁴³ See Cohen & Shao-chuan Leng, *The Sino-Indian Dispute Over the Internment and Detention of Chinese Nationals*, in CHINA'S PRACTICE OF INTERNATIONAL LAW: SOME CASE STUDIES 268, 289 et seq. (J. Cohen ed. 1972).

⁴⁴ Chou Keng-sheng, *Don't Allow American and British Aggressors to Intervene in the Internal Affairs of Other States*, (1958) 4 POLITICAL-LEGAL RESEARCH 3-4.

because that request coincided with the genuine desires of the Hungarian people." The revolt in Hungary had not been a "spontaneous mass action, but one imposed on the Hungarian people by a gang of conspirators, instigated by the United States and other Western countries."⁴⁵

Thus, when foreign troops enter another state at the request of the government of that state in order to assist in restoring order, Peking's opinion of the legality of this action turns upon whether, in its view, "that request coincides with the genuine desires of the . . . people." This, of course, permits the PRC to decide the legal question on the basis of political expediency, and that is precisely what it has continued to do. In 1969, for example, it condemned the "clique" of Prime Minister Thanom of Thailand—"merely a bunch of lackeys fed by U.S. imperialism"—for "saying that the U.S. aggressor forces had been invited by it to 'help' cope with the revolutionary forces of Thailand."⁴⁶ Similarly the PRC has condemned as aggression the actions of American combat forces in Vietnam at the request of the Republic of Vietnam.⁴⁷

Between the Hungarian and Lebanese cases, of course, Chairman Mao had launched one of his periodic major domestic campaigns against intellectuals—the "anti-rightist" movement of 1957—after which a number of scholars of international law ceased publishing.⁴⁸ Interestingly for our purposes, a principal reason offered for the purge of scholar Ch'en T'i-ch'iang was his failure to assert that the legality of intervention by invitation rests upon whether the invitation "coincides with the genuine desires of the . . . people." Ch'en was accused of having adopted an "anti-Party, anti-socialist position" because his justification of Soviet actions in the Hungarian "incident" had been uncritically broad. He had endorsed the traditional view of most scholars and statesmen that if, during a civil war, a foreign state responds to a widely-recognized government's request for military assistance against the insurgents, the action of the foreign state is legal even though the government has ruled in a manner contrary to the interests of its

⁴⁵ *Refuting the Loud Western Outcry Over the "Hungarian Issue,"* People's Daily, Nov. 14, 1956, at 1, col. 1. It should be noted that the United States claimed that the insurrection which had occurred in Lebanon some two months prior to President Chamoun's request for American military forces had been encouraged and strongly supported by Egypt, Syria, and the Soviet Union. See, e.g., 5 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 826-27, 1169-70 (1965).

⁴⁶ *The Face of a Traitor*, People's Daily, Jan. 25, 1969, translated in *PEKING REVIEW*, Feb. 21, 1969, at 14.

⁴⁷ See text accompanying note 84 *infra*.

⁴⁸ For analysis of the implications of the "anti-rightist" movement for legal scholarship and the administration of justice in China, see J. COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949-1963: AN INTRODUCTION* 14-17 (1968).

people.⁴⁹ Obviously, he had written, such foreign aid could provoke the anger of the people; nevertheless, even if the revolutionary forces succeeded in establishing a new government, the foreign state could not be deemed legally accountable for its action. It would only have earned the political ill-will of the new government.⁵⁰

Ch'en's critics pointed out the implications of his view for China's civil war. They argued:

Ch'en T'i-ch'iang is supporting the following proposition: American imperialism does not bear legal responsibility for aiding the Chiang Kai-shek clique in fighting the civil war and in suppressing the revolutionary movement of the Chinese people. There is simply ill-will on the part of the Chinese people. In other words, from Ch'en T'i-ch'iang's point of view, such acts by American imperialism do not violate international law.⁵¹

Obviously, they concluded, American imperialism had committed illegal intervention in China "and only those rightists who breathe out of imperialism's nostrils would say that it cannot result in legal responsibility and simply results in political ill-will."⁵²

Ch'en's other publications do not portray a man who consciously sought to "breathe out of imperialism's nostrils." Indeed, he frequently articulated the legal bases for the PRC's protests against imperialist attempts to intervene in Chinese affairs. Early in 1956, for example, a Nationalist Chinese jet fighter plane that had been harassing the mainland landed in Hong Kong after having been pursued by Communist Chinese air defense forces. The PRC demanded that the United Kingdom, which recognized it as the sole government of China and which did not recognize a state of belligerency in China, detain both plane and pilot. When the British permitted the pilot to return to Taiwan and were preparing to release the plane as well, the PRC Foreign Ministry lodged a protest, and Ch'en T'i-ch'iang swiftly supported his government in an article that appeared in the *People's Daily*. Drawing upon Lauterpacht's *Oppenheim*,⁵³ the draft convention adopted by the Institute of International Law in 1900,⁵⁴ and espe-

⁴⁹ For discussion of both the traditional view and the developing minority view that in a civil conflict foreign assistance to both sides should be prohibited, see Moore, *supra* note 6, at 245-46, 272 et seq.

⁵⁰ See Ch'en T'i-ch'iang, *supra* note 40.

⁵¹ Ho Wu-shuang & Ma Chün, *A Criticism of the Reactionary Viewpoint of Ch'en T'i-ch'iang on the Science of International Law*, 1957(6) POLITICAL-LEGAL RESEARCH 35, 38.

⁵² *Id.* 38.

⁵³ See note 37 *supra*.

⁵⁴ *Droits et devoirs des puissances étrangères et leurs ressortissants, au cas de mouvement insurrectionnel, envers les gouvernements établis et reconnus qui sont aux*

cially the 1928 Havana "Convention on the Duties and Rights of States in the Event of Civil Strife,"⁵⁵ he claimed that the British government had violated its "obligation not to allow the area under its administration to be turned into a base to conduct hostile activities against the government of a foreign country with which it is at peace."⁵⁶ Ch'en maintained that by allowing pilot and plane to return to Taiwan, Britain was permitting renewal of their hostile activities against China, and this constituted an international delinquency.

Actually, Ch'en's fall from grace appears to have been caused not so much by his specific views on intervention as by his general outlook. He apparently spoke frankly in the spring of 1957 during the movement to "let a hundred flowers bloom, let a hundred schools contend," when Chairman Mao induced many intellectuals to help "rectify" the Party by offering criticisms.⁵⁷ During this brief period of free speech, Ch'en, who, until his subsequent dismissal as a "rightist," served as head of the Division of International Law of the Institute of International Relations of the Chinese Academy of Sciences, was said to have "even proposed the reactionary view of the necessity of studying Anglo-American law."⁵⁸ Ch'en had been educated at the University of London and in 1951 had published his doctoral dissertation on the law of recognition under the auspices of the London Institute of World Affairs.⁵⁹ This professional training seems to have led him astray in new China, for during the "anti-rightist" movement he was attacked as one of "the old international law jurists, who still adhere to the purely legalistic viewpoint" that fails to recognize that international law is simply a legal instrument in the service of country, socialism and peace, to be used when useful but discarded when disadvantageous.⁶⁰

IV. "SOCIALIST INTERNATIONALISM," NON-INTERVENTION AND THE SINO-SOVIET SPLIT

In the mid-1950's, in an effort to gain greater equality in China's relations with the Soviet Union, the PRC attempted to modify the

prises avec l'insurrection, Sept. 8, 1900, in 18 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 181 (1900).

⁵⁵ 46 Stat. 2749 (1928); T.S. No. 814.

⁵⁶ Ch'en T'i-ch'iang, *We Cannot Allow Hong Kong To Be Used As A Base For Hostile Activities Against the Mainland*, People's Daily, Mar. 19, 1956, at 3.

⁵⁷ See J. COHEN, *supra* note 48, at 14.

⁵⁸ Lin Hsin, *On the Systems of International Law After the Second World War*, 1 Chiao-hsüeh yü yen-chiu [Teaching and Research] 34, 38 (1958).

⁵⁹ CH'EN T'I-CH'ANG, *THE INTERNATIONAL LAW OF RECOGNITION* (1951).

⁶⁰ Chu Li-lu, *Refute Ch'en T'i-ch'iang's Absurd Theory Concerning International Law*, People's Daily, Sept. 18, 1957, at 3. For details of the similar attack on scholars of domestic law during the anti-rightist movement, see Cohen, *The Chinese Communist Party and "Judicial Independence": 1949-1959*, 82 HARV. L. REV. 967, 989-93 (1969).

doctrine of "socialist internationalism," often called "proletarian internationalism," which Stalin had developed as a rationale for maintaining Soviet primacy over and interference in other Communist states.⁶¹ Peking sought to obtain a Soviet admission that the "five principles of peaceful coexistence" were applicable not only to relations between socialist states and non-socialist states but also to relations between socialist states themselves. The high point of this effort came with the Soviet Declaration of October 30, 1956, that the policy of peaceful coexistence "finds its most profound and consistent expression in the mutual relations between the socialist countries" and that "the Soviet Government is ready to discuss, together with the governments of other socialist states, measures . . . to remove the possibilities of violating the principle of national sovereignty and . . . equality."⁶² The PRC promptly announced that the Soviet Declaration, which had been stimulated by the unfavorable reaction to the initial use of Soviet troops against the Hungarian revolt, was "of great importance in correcting errors in mutual relations between the socialist countries and in strengthening unity among them."⁶³ When the USSR brutally suppressed that revolt shortly thereafter, Chinese writers claimed that this did not violate the Declaration because "the action of the Soviet army was entirely in the interest of the Hungarians,"⁶⁴ being designed "to assist Hungary in safeguarding democratic rights, the fruit of socialist construction and the people's lives and security, in accordance with the spirit of solidarity and cooperation between brother countries."⁶⁵

The PRC subsequently ceased insisting that the "five principles of peaceful coexistence" be made applicable to relations within the Soviet bloc, but it continued to seek a redefinition of "socialist internationalism" that would not violate the national independence and equality of other socialist countries.⁶⁶ This doctrine, as vague as "peaceful coexistence," was said to have a distinctive content that described the superior standards that were supposed to prevail in relations between socialist states. The standards sought by Peking called

⁶¹ For an excellent account of this intricate, unobtrusive effort, see J. HSIUNG, *supra* note 3, at 49-61.

⁶² Declaration of the U.S.S.R. On the Foundation for the Development and Further Strengthening of Friendship and Cooperation Between the Soviet Union and Other Socialist States, October 30, 1956, Soviet News (London), Oct. 31, 1956, at 1-2.

⁶³ Statement by the Government of the People's Republic of China on the Declaration by the Government of the Soviet Union on October 30, 1956, November 1, 1956, PEOPLE'S CHINA (Supp.), Nov. 16, 1956, at 1-2.

⁶⁴ Sun Nan, *supra* note 41.

⁶⁵ Tien Pao-shen, *supra* note 41.

⁶⁶ See J. HSIUNG, *supra* note 3, at 62.

not only for the full equality of socialist states but also for the comradely mutual assistance that was said to be the hallmark of the socialist bloc.⁶⁷ By the early 1960's, however, with Sino-Soviet unity virtually at an end, the PRC obviously realized that the generality of the principles of socialist internationalism continued to permit the USSR to manipulate them to achieve its own national objectives within the socialist camp and that "mistakes" and "neglect" of the principle of equality among nations were likely to persist unless measures were taken to specify a code of conduct for the socialist countries.

In 1962, for example, before the Sino-Soviet dispute reached the level of open polemics, the then Vice-Premier and Foreign Minister Ch'en Yi implicitly lectured the USSR on "the common principles guiding the mutual relations between socialist countries," principles which "are entirely different from those adopted by the imperialist countries." A socialist country, he said at the Bulgarian Embassy in Peking, does not engage in subversive activities, does not try to impose its will on other countries, does not use economic aid to disguise intervention, does not indefinitely maintain military bases and troops abroad, does not enmesh other countries in military pacts that get others to pull its chestnuts out of the fire, does not undermine the peace and neutrality of other countries, and does not suppress national liberation movements.⁶⁸ In the circumstances of the time it did not require much imagination on the part of Bulgaria and other socialist states to question whether the Soviet Union measured up to these standards of proletarian internationalism.

Shortly after Ch'en Yi's speech, Sino-Soviet relations deteriorated to the point that each side abandoned veiled references in favor of more specific indictments. China's leaders charged their Soviet counterparts with having "arbitrarily infringed the sovereignty of fraternal countries, interfered in their internal affairs, carried on subversive activities and striven in every way to control fraternal countries." The Soviet elite, it was claimed, sought to turn fraternal countries into economic appendages and constantly brought political, economic, and military pressure to bear on them. Drawing particularly on the experiences of Albania and China, the Chinese accused their erstwhile elder brothers of openly attempting to overthrow the leadership of other fraternal countries. "Such measures which gravely worsen state relations are rare even between capitalist countries," they said.⁶⁹

⁶⁷ *Id.* 57-64.

⁶⁸ *Guiding Principles for Relations between Socialist Countries*, PEKING REVIEW, Sept. 14, 1962, at 11.

⁶⁹ *The Leaders of the C.P.S.U. Are the Greatest Splitters of Our Times*, People's Daily, Feb. 4, 1964, at 1-4, translated in PEKING REVIEW, Feb. 7, 1964, at 5, 9-10.

The Soviet invasion of Czechoslovakia in 1968 evoked the shrillest Chinese condemnations. The Chinese press heaped scorn upon the attempts of Soviet spokesmen to devise a "socialist," "internationalist" fig-leaf that would "legalize" their government's action, which was branded as both aggression and intervention. The theory that "historical development" had made it appropriate to turn "national dictatorship" into "international dictatorship" in order to "protect" the [socialist] 'community' was dismissed as a cloak for "revisionist social-imperialist aggression" and "rapacious expansionist ambitions."⁷⁰ The related theory that "the interests of the community" represent "the highest sovereignty" and must be put above the sovereignty of the individual member-states, which is "limited," was characterized as "gangster logic."⁷¹ The theory that "the Soviet Union . . . as a major world power . . . cannot passively regard events that though they might be territorially remote, nevertheless have a bearing on our security and the security of our friends" was rejected as merely a refurbished version of the other fallacies.⁷² The USSR was also accused of reformulating its definition of "aggression" so that armed encroachment on countries with the same social system would not be regarded as aggression but as action in defense of the system.⁷³

What the USSR has done, the Chinese claimed, was to ape the imperialist governments by seeking to conceal its illegal interference in the affairs of other countries amid "professions of humanity, justice and virtue."⁷⁴ "U.S. imperialism invented the so-called 'free world community' and Soviet revisionism followed suit by concocting the so-called 'community of socialist countries.'"⁷⁵ Chinese writers overlooked any similarity between Soviet activities in Czechoslovakia and Soviet suppression of the Hungarian revolt, which the Chinese had deemed consistent "with the spirit of solidarity and cooperation between brother countries."⁷⁶

⁷⁰ Kung Chun-ping, *The Theory of "International Dictatorship" Is A Gangster Theory of Social-Imperialism*, PEKING REVIEW, May 16, 1969, at 4-5.

⁷¹ *Theories of "Limited Sovereignty" and "International Dictatorship" Are Soviet Revisionist Social-Imperialist Gangster Theories*, PEKING REVIEW, Mar. 28, 1969, at 23-25.

⁷² Chien Yen, *Tear Off the Wrappings From Soviet Revisionists' Theory of "Responsibility for Security"*, PEKING REVIEW, Sept. 3, 1969, at 20-22.

⁷³ Wang Chao-tsai, *Tear Off the Wrappings From the Soviet Revisionists' "Definition of Aggression"*, PEKING REVIEW, May 30, 1969, at 13-15.

⁷⁴ Chien Yen, *supra* note 72.

⁷⁵ Chi Hsiang-yang, *Smash the New Tsars' Theory of "Limited Sovereignty"*, PEKING REVIEW, May 23, 1969, at 20-22. Some American students of international law have also noted the similarities in Soviet and American deeds and words. See, e.g., W. FRIEDMANN, O. LISSITZYN & R. PUGH, *supra* note 9, at 1007.

⁷⁶ See text accompanying notes 40-50, 64-65 *supra*. The cases of Hungary and Czechoslovakia might have been distinguished on the ground that in the latter case the Soviet Union failed to provide convincing evidence that the existing government had

V. CHINA'S INTERESTS ABROAD AND NON-INTERVENTION

What has thus far been said may lead the reader to believe that China has been almost entirely concerned with forging the principle of non-intervention into a defensive shield for fending off the depredations of all types of imperialism and that its only effort to legitimize interference in the affairs of other countries was thrust upon it in the 1950's because of its embarrassing alliance with the Soviet Union. Actually, of course, this is far from a complete picture of China's position. Although the PRC, like previous Chinese regimes, has been primarily preoccupied with problems at home, nevertheless it has been deeply committed to influencing events abroad through a wide range of actions that have inevitably raised questions about its view of the law of intervention. The PRC's enthusiastic participation in UN condemnations of the South African and Rhodesian governments for abuses against their respective peoples, despite Peking's earlier protests that UN condemnation of PRC conduct in Tibet constituted intervention in China's domestic affairs,⁷⁷ is only a recent illustration of this commitment.⁷⁸

On some occasions Peking has explicitly sought to reconcile its attempts to influence events abroad with the principle of non-intervention. For example, in 1959 China refused to accept the Indonesian Foreign Minister's protest against the activities of Chinese diplomats and consuls to protect overseas Chinese nationals against the discriminatory measures adopted by the Indonesian Government. The PRC claimed that it had always encouraged overseas Chinese to abide by the laws of Indonesia and had never interfered in internal affairs, but that it was obligated to protect the rights of the overseas Chinese and that the execution of this obligation "can in no way be interpreted as agitation to incite overseas Chinese to defy the orders of the local government"⁷⁹

requested the assistance of Soviet forces. Cf. W. FRIEDMANN, O. LISSITZYN & R. PUGH, *supra* note 9, at 1004.

⁷⁷ See, e.g., text accompanying notes 35, 36 *supra*.

⁷⁸ For example, soon after the arrival of the first PRC delegation to the UN, Ambassador Huang Hua, China's permanent representative at the UN, stated:

[T]he question of Southern Rhodesia involved the basic interests of five million people of Zimbabwe. It involved the basic interests of the African people and African countries. In accordance with the decisions of the United Nations and the Charter, the United Nations and the Security Council were entitled to discuss, to intervene, to judge and to make decisions on that question.

Meeting of the Security Council, Dec. 30, 1971, 9 U.N. MONTHLY CHRONICLE 56, 82 (1972). See also 9 *id.* 10, 14. The *Peking Review* reported that at the plenary meeting of the UN General Assembly of November 29, 1971, the Assembly, with Chinese support, adopted nine resolutions condemning the apartheid policy of the South African regime. *China at the United Nations*, PEKING REVIEW, Dec. 10, 1971, at 23, 24.

⁷⁹ Foreign Minister Ch'en Yi's Letter of December 24 to Indonesian Foreign Minister,

At the very height of the Cultural Revolution the PRC repeatedly tried to pressure Switzerland into putting an end to the activities on Swiss soil of refugee "Tibetan bandits." Far from expressing concern that this might be construed as intervention in Swiss affairs, Peking actually claimed that Swiss toleration of a "Tibetan Institute" constituted "a gross intervention in the internal affairs of China." The Chinese Government rationalized its charge by pointing out that:

[T]he [T]ibetan traitorous clique of [the] [D]alai [Lama] which has fled China is the enemy of the Tibetan and other nationalities of China. With the support of imperialism, revisionism and reaction, it is trying to accumulate its forces abroad and look for an opportunity to re-establish the reactionary domination of the serf-owners overthrown by the [T]ibetan people and to subject again the liberated [T]ibetan people who are leading a happy life to the dark and inhuman serfdom.⁸⁰

Unlike the United States and the Soviet Union, on only a few occasions has China sought to influence events by sending troops abroad. The Korean conflict brought the PRC its first involvement in international warfare. Probably out of deference to the principle of non-intervention, it maintained the fiction that it did not officially participate, but merely permitted Chinese soldiers to "volunteer" for service in Korea. Nevertheless, Peking was careful to argue that the entry into the conflict of the Chinese People's Volunteers was an act of self-defense, taken only after the Chinese had witnessed "Taiwan fall prey to aggression and the flames of the United States war of aggression against Korea leap towards them" as American forces advanced towards the Sino-Korean frontier. In these circumstances, stated the chief PRC delegate to the UN Security Council meetings of late 1950, there was "no reason whatever to prevent voluntary departure for Korea to participate, under the command of the Government of the Korean People's Democratic Republic . . ."⁸¹ This was "action not only to assist a neighbor, but to protect our own country."⁸²

Chinese forces withdrew from Korea in 1958, five years after

U.S. CONSULATE GENERAL, HONG KONG, SURVEY OF THE CHINA MAINLAND PRESS, Dec. 31, 1959, at 47-48. The letter did not distinguish between the PRC's right to protect overseas Chinese who are also Indonesian nationals and its right to protect overseas Chinese who are not.

⁸⁰ Foreign Ministry Protest to Swiss Government, HSINHUA NEWS AGENCY, Aug. 18, 1967, at 21.

⁸¹ 5 U.N. SCOR, 527 meeting 96 (1950).

⁸² Wu Hsiu-ch'uan's Speech Regarding the American Aggression on China, Dec. 16, 1950, *Chung-hua jen-min kung-ho-kuo tui-wai kuan-hsi wen-chien chi* [Collection of Documents Relating to the Foreign Relations of the People's Republic of China, 1949-1950] 219-37 (1957).

an armistice was signed, and early in 1965, Chairman Mao proudly affirmed that China had no troops outside its own frontiers. He said:

China's armies would not go beyond her borders to fight. . . . Fighting beyond one's own borders was criminal. Why should the Chinese do that? The Vietnamese could cope with their situation.

. . . .
 . . . China gave support to revolutionary movements but not by sending troops. Of course, whenever a liberation struggle existed China would publish statements and call demonstrations to support it. It was precisely that which vexed the imperialists.⁸³

Shortly afterward, however, the United States began to carry out air strikes against North Vietnam. The Chinese Government promptly declared that this constituted a flagrant violation of the Geneva agreements of 1954 relating to Indo-China, that therefore "the Democratic Republic of Vietnam has gained the right of action to fight against U.S. aggression, and all the other countries upholding the Geneva Agreements have gained the right of action to assist the Democratic Republic of Viet Nam in its fight against aggression." Ominously, the statement went on to note that China had adhered to the Final Declaration of the 1954 Geneva Conference, that the Chinese and Vietnamese are "the closest of brothers," that aggression against the Democratic Republic of Vietnam (DRV) "means aggression against China," and that the Chinese people "will definitely not stand idly by."⁸⁴ Following the introduction of large-scale American combat forces in Vietnam, China sent from 30,000 to 50,000 regular members of the People's Liberation Army to North Vietnam, where, with the consent of the DRV, they engaged in construction work and manned anti-aircraft defenses⁸⁵ until their reported withdrawal in 1969. Chinese troops were subsequently reported to be building roads in Laotian territory controlled by the Pathet Lao, in accordance with an old cooperation agreement between Laos and China.⁸⁶

VI. SUPPORT FOR WARS OF NATIONAL LIBERATION

As noted above,⁸⁷ Chairman Mao has stated that what vexes "the imperialists" is not the dispatch of Chinese troops abroad but China's

⁸³ Snow, *Interview with Mao*, NEW REPUBLIC, Feb. 27, 1965, at 17, 22.

⁸⁴ *China is Well Prepared to Assist D.R.V. Against U.S. Aggression*, PEKING REVIEW, Feb. 12, 1965, at 6-7.

⁸⁵ Whiting, *How We Almost Went to War with China*, LOOK, Apr. 29, 1969, at 76, 77.

⁸⁶ N.Y. Times, Dec. 15, 1969, at 2, col. 3.

⁸⁷ See text accompanying note 83 *supra*.

support for "liberation struggles." With the deepening of the Sino-Soviet split in the 1960's, Peking increasingly sought to portray "Mao Tse-tung's thought" as the beacon that illuminates the revolutionary road of the oppressed peoples of the world. On the 50th anniversary of the Bolshevik revolution the principal Chinese Communist journals asserted that the "center of world revolution" had shifted from Moscow to Peking.⁸⁸

The strategy of waging revolutionary warfare that Chairman Mao has offered the colonial and semi-colonial countries of Asia, Africa, and Latin America is known as "people's war." Based on supposedly universal elements in the Chinese Communist Party's own experience in attaining power, "people's war," as articulated in Lin Piao's famous elaboration, calls for: leadership by a revolutionary communist party that analyzes conditions and makes policy according to Marxist-Leninist precepts; mobilization by the party of the broad masses in a "united front" policy that supports protracted war against imperialism, feudalism and bureaucratic capitalism; reliance upon the peasantry and establishment of rural bases under party leadership; creation of a party-led army that is imbued with "proletarian revolutionary consciousness and courage" and actively seeks the support of the masses; resort to Mao's strategy and tactics for gradually moving from mass mobilization and guerrilla warfare to mobile and even positional warfare as the revolution progresses; and adherence to a policy of self-reliance which recognizes that "[r]evolution or people's war in any country is the business of the masses in that country and should be carried out primarily by their own efforts; there is no other way."⁸⁹

In the statement quoted above,⁹⁰ Chairman Mao gave the impression that China's support for liberation struggles consists of publishing statements and calling demonstrations in China. Although Lin Piao agreed that no revolution can be exported, he claimed that, unlike "the Khrushchev revisionists," the Chinese "invariably" fulfill their "internationalist duty" to give the revolutionary wars of oppressed nations and peoples "firm support and active aid."⁹¹ Huang Hua, China's permanent representative at the UN, recently said that China offers political, moral, and physical aid to African liberation movements.⁹² No Chinese leader has spelled out the scope and nature of this aid.

⁸⁸ Mohr, *Peking Says Mao is Today's Lenin*, N.Y. Times, Nov. 7, 1967, at 10, col. 1.

⁸⁹ Lin Piao, *Long Live the Victory of People's War*, PEKING REVIEW, Sept. 3, 1965, at 9-19. For discussion of the Mao-Lin theory, see P. VAN NESS, *REVOLUTION AND CHINESE FOREIGN POLICY* 50-73 (1970).

⁹⁰ See text accompanying note 83 *supra*.

⁹¹ Lin Piao, *supra* note 89, at 28.

⁹² *Chinese Envoy*, Japan Times (Kyodo-Reuter dispatch from Khartoum), Feb. 8, 1972, at 4.

The Chinese Communists have not tried to conceal their ideological and psychological support for foreign revolutionaries, including non-communist revolutionaries. In addition to continuously issuing militant propaganda that advocates revolution against oppression everywhere, the Chinese have on many occasions implicitly or explicitly endorsed revolution in specific countries and have sometimes endorsed particular revolutionary organizations. Implicit endorsement has taken the form of reprinting policy statements of foreign revolutionary movements in the Chinese press, reporting news of their activities or publishing maps that designate certain countries as sites of liberation struggles. Explicit endorsement has consisted of statements by Chairman Mao, other leaders or the Communist Party itself.⁹³

Peking has sought to export this ideological and psychological support to selected countries by disseminating translations of the works of Chairman Mao and other leaders, local language periodicals and radio broadcasts, and symbols of revolution such as Mao badges. It has also attempted to influence local media and to use cultural exchange as a propaganda instrument. China's public support has included playing host to representatives of foreign revolutionary organizations. It has even allowed some of these to establish permanent diplomatic-type missions in Peking, such as the Office of the Palestine Liberation Organization and the South Vietnamese NLF Mission.⁹⁴ The latter, after the Provisional Revolutionary Government of the Republic of South Vietnam was proclaimed, was declared to be the official embassy of the new government.⁹⁵ And since 1970 the PRC has permitted Prince Sihanouk to operate his Cambodian government-in-exile from Peking.⁹⁶

The PRC's military and economic support for wars of national liberation has generally been covert. The Chinese have apparently shipped arms, ammunition, and other military supplies to a variety of movements. They reportedly have given military training and advice to certain prospective revolutionaries, both in China and abroad, and have financed the organization and maintenance of some revolutionary groups. Following the successful precedent of its aid to the Vietminh, China has provided sanctuary to guerrilla forces acting in selected countries on its periphery, and it has permitted a number of insurgent organizations in neighboring Southeast Asian countries to operate radio stations from Chinese soil. Several governments in Asia and

⁹³ See the excellent discussion in P. VAN NESS, *supra* note 89, at 81-89.

⁹⁴ J. HSIUNG, *supra* note 3, at 221.

⁹⁵ See P. VAN NESS, *supra* note 89, at 130.

⁹⁶ See text accompanying notes 113-16 *infra*.

Africa have also alleged that Peking has abetted political assassination and engaged in political bribery.⁹⁷

Yet most observers agree that, apart from rhetoric, the level of Chinese support for revolutionary activities abroad has in fact been quite low and that the degree of success attained has been even lower.⁹⁸ China is a poor, vast, developing country that is beset by the political, economic, social, and administrative problems confronting all developing countries and thus has limited resources to allocate to foreign liberation struggles. Beyond that, however, even in promising situations in geographically contiguous countries, China has frequently failed to give even verbal support to local revolutionary groups. Prior to the Cultural Revolution, China refrained from endorsing wars of national liberation in Third World countries with which it had established diplomatic relations; only governments that rebuffed Peking's overtures became possible targets for Chinese-sponsored revolution. It was a government's foreign policy, rather than the nature of its rule at home, that determined the PRC's behavior toward it.⁹⁹

Largely for reasons of domestic politics, during the early years of the Cultural Revolution (1966-1967) China's leaders sought to make PRC foreign policy adhere more closely to Maoist revolutionary theory, although their material aid to revolution did not match their revolutionary rhetoric. As the Cultural Revolution subsided, however, the PRC gradually began to revert to the foreign politics of national interest that it had previously practiced. China's 1971 support of the feudal, militaristic government of Pakistan, rather than the war of liberation waged by the oppressed people of Bangla Dosh, made this transparent to the world.¹⁰⁰

⁹⁷ For an illustrative account of the range of PRC efforts to support wars of national liberation, see J. COHEN & HUNGDAH CHIU, *THE PEOPLE'S REPUBLIC OF CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY*, ch. 9 (1974). For a useful case study, see J. ZASLOFF, *THE ROLE OF THE SANCTUARY IN INSURGENCY: COMMUNIST CHINA'S SUPPORT TO THE VIETMINH, 1946-1954* (1967).

⁹⁸ See, e.g., Robinson, *Peking's Revolutionary Strategy in the Developing World: The Failures of Success*, *ANNALS*, Nov. 1969, at 64; Whiting, *The Use of Force in Foreign Policy by the People's Republic of China*, *id.*, July 1972, at 36; J. HSIUNG, *supra* note 3, at 288, 292-93; Ryan, *The Decline of the "Armed Struggle" Tactic In Chinese Foreign Policy*, 10 *CURRENT SCENE*, Dec. 1972, at 1.

⁹⁹ P. VAN NESS, *supra* note 89, at 166-97.

¹⁰⁰ An article in the *Peking Review* stated that "the so-called 'Bangla Dosh' is simply a plot of the Indian government to interfere in the internal affairs of Pakistan . . ." *Indian Reactionaries Launch Armed Aggression Against Pakistan*, *PEKING REVIEW*, Dec. 10, 1971, at 13. For years India had charged that Pakistan had been allowing Chinese military experts to train and arm Indian rebels on East Pakistani soil. See, e.g., *Reports Say Mizo Rebels Asking Chinese Aid*, Foreign Broadcast Information Service, Aug. 21, 1967, at 1 (U.S.).

VII. RECONCILING NON-INTERVENTION WITH WARS OF NATIONAL LIBERATION

To the extent that Peking does support liberation struggles, the question arises as to how its fulfillment of this "internationalist duty" can be consistent with the principle of non-intervention that it has espoused. Both the USSR and the United States also have attempted to subvert existing governments, but to differing degrees they have been more reluctant than China to acknowledge their support for violent political change and to confront the question openly. For example, because of its felt inability to offer legal justification for overt efforts to overthrow the Castro regime in Cuba in 1961 and the Arbenz regime in Guatemala in 1954, the United States attempted to act covertly in those cases.¹⁰¹ Although the Soviet Union, like China, provides support to selected wars of national liberation, Moscow was slower than Peking publicly to advocate it, and only after the downfall of Khrushchev and the bruising polemic with Peking over the meaning of peaceful coexistence did Soviet publicists begin explicitly to claim that such aid does not violate modern international law.¹⁰²

Yet in their capacity as government officials China's leaders too have generally avoided publicly facing up to this basic problem of international law. Because of this, it has been possible for political scientists to write excellent studies of Peking's support for wars of national liberation without ever explicitly dealing with the legal aspects.¹⁰³ Nevertheless, in their capacity as Chinese Communist Party officials engaged in bitter debate with the Communist Party of the Soviet Union,¹⁰⁴ China's leaders have devoted a great deal of attention to reconciling their aid to wars of national liberation with their endorsement of the principles of peaceful coexistence. Indeed, Khrushchev's sensitivity to the contradiction seemingly inherent in supporting both revolution and non-intervention drew heavy Chinese fire. For example, Chinese ideologists charged in a major editorial attack in late 1963 that "he regards the anti-imperialist struggles of the socialist countries and of the people of the world as incompatible with the policy of peaceful coexistence." Khrushchev was sacrificing "the proletarian internationalist task of helping the revolutionary struggles of

¹⁰¹ For an account of the United States' efforts to subvert "undesirable governments," including those of Cuba and Guatemala, see R. BARNETT, *INTERVENTION AND REVOLUTION* 17, 229-36 (1963). Regarding the "Bay of Pigs," see, e.g., R. HILSMAN, *TO MOVE A NATION* 30-34 (1967).

¹⁰² See J. HSIUNG, *supra* note 3, at 53, 68.

¹⁰³ See generally P. VAN NESS, *supra* note 89; Robinson, *supra* note 98.

¹⁰⁴ For a review of the 1963-1967 polemics, see J. GITTINGS, *SURVEY OF THE SINO-SOVIET DISPUTE* (1968).

the oppressed peoples and nations" upon the altar of peaceful coexistence, they maintained. The true view of peaceful coexistence, a concept which they claimed to favor, is that "intrinsically" imperialism is unwilling to accept it, and insists on committing aggression and suppressing oppressed peoples; therefore, they stated, the socialist countries, together with the people of all other countries, must wage "a tit-for-tat struggle against imperialism."¹⁰⁵

Thus the argument maintained in this editorial and a series of Party documents¹⁰⁶ was that socialist states should apply peaceful coexistence, including the principle of non-intervention, in their relations with non-socialist states except when dealing with imperialist states. Because the latter do not respect the rule of non-intervention and the other principles of peaceful coexistence but suppress oppressed peoples, according to this theory, the socialist states are free to, indeed are obligated to, go to the defense of the oppressed peoples by supporting liberation struggles. It is this "tit-for-tat" collective self-defense theory that the Chinese rely on to demonstrate that there is no inconsistency in a state's striving for peaceful coexistence while simultaneously supporting revolution.

A prominent Chinese legal scholar bolstered the theory of party ideologists by applying it to concrete cases. Responding to Secretary of State Dean Rusk's speech at the annual meeting of the American Society of International Law in 1965,¹⁰⁷ Fu Chu rejected the argument that the theory and practice of wars of national liberation undermine international law and that support for such wars constitute aggression. Liberation struggles, he wrote, are "wars of national self-defense conducted by colonized or semi-colonized states or nations to preserve their own sovereignty, independence, unity, and territorial integrity." Because they are waged against imperialist aggression, they are "just wars and are fully consistent with modern international law." Indeed, as in the case of Vietnam, they represent "an important contribution to the preservation and development of international law." Fu Chu sought to button up his case by invoking American history:

[T]he American war of independence against England in the eighteenth century received strong support and aid from

¹⁰⁵ *Peaceful Coexistence—Two Diametrically Opposed Policies*, People's Daily, Dec. 12, 1963, at 1-4, translated in *PEKING REVIEW*, Dec. 20, 1963, at 9-14.

¹⁰⁶ See Chinese Communist Party Central Committee Comment on the Letter of March 30, 1963, from the Central Committee of the Communist Party of the Soviet Union, June 14, 1963, in Kuan-yü kuo-chi kung-ch'an chu-yi yun-tung tsung-lu-hsien te chien-yi ho yu-kuan wen-chien [Comments on the General Line of the International Communist Movement and Related Documents] 33 (Peking ed. 1963); Lin Piao, *supra* note 89, at 28.

¹⁰⁷ The speech is printed in *AM. SOC'Y INT'L L. PROC.* 247-55 (1965).

foreign states. Frenchmen and many [other] Europeans even organized voluntary forces to assist the American people in resisting English colonialists. According to Rusk's "international law," French people and people of other countries aiding the American war of independence at that time not only committed aggression against America but also threatened and committed aggression against England. What an absurd conclusion this is. The American people will never agree with Rusk's absurd theory.¹⁰⁸

Despite the efforts of Chinese ideologists and publicists to justify the position that state assistance to foreign wars of national liberation does not violate the rule of non-intervention, the state practice of the PRC reflects awareness of the fact that most of the world community's member states remain unpersuaded. Rather than officially, explicitly, and consistently maintain its minority position in both practice and theory, the Chinese Government has often employed a variety of tactics to avoid the problem created by its challenge to accepted international legal principles.

We have already seen that the PRC, like other intervening states, generally seeks to conceal the scope and nature of its military and economic aid to revolutionary movements. This has been done in obvious deference to the principle of non-intervention. For example, when in 1964 Kwame Nkrumah permitted Chinese guerrilla warfare instructors to enter Ghana for the purpose of training nationals of other African states in the arts of revolutionary warfare, the Chinese embassy insisted upon secrecy; according to a report published by the post-Nkrumah government, the embassy had said secrecy was necessary "in view of the delicate nature of the instructors' assignment in Ghana and also in view of the various allegations by the imperialists that China was encouraging subversion in certain countries."¹⁰⁹

It is interesting to note how the PRC handled the post-Nkrumah government's charges that the training of saboteurs in Ghana constituted intervention in the affairs of other African states. Peking responded only to the extent that it was possible to offer a plausible justification for the presence of the instructors under traditional international law. It dismissed the essential charges as "absurd slander" and stated:

As is well known, the military experts as well as the economic and technical experts sent by the Chinese Government to work in Ghana were dispatched at the request of the govern-

¹⁰⁸ Fu Chu, *Rusk's "International Law" Cannot Conceal the Crime of Aggression Against Vietnam by American Imperialism*, 1965(2) POLITICAL-LEGAL RESEARCH 8-11.

¹⁰⁹ GHANA MINISTRY OF INFORMATION, *NKRUMAH'S SUBVERSION IN AFRICA* 7-8.

ment of the Republic of Ghana and in pursuance of the relevant agreements signed by the two countries. They always worked in accordance with the arrangements made by the Ghanaian Government. They are beyond reproach. No one can succeed in distorting all these facts.¹¹⁰

The PRC has frequently sought to resolve the tension inherent in supporting both revolution and non-intervention by resort to such techniques. In 1966, for example, it rejected Indian protests against Chinese radio broadcasts, asserting:

It is entirely within China's sovereign rights for the Chinese frontier guards stationing [*sic*] at Natu La on the Chinese-Sikkim boundary to make broadcasts on Chinese territory advocating the friendship between the Chinese and Indian peoples and setting forth the truth about the Sino-Indian boundary question, and no foreigner has any right to interfere in this.¹¹¹

The Foreign Ministry denied Indian charges that the broadcasts had called upon the Indian Army to revolt against its government. Thus, as in the Ghanaian case, the PRC attempted to impose a pattern upon the facts that made it possible to defend its actions in accepted international legal terms. Similarly, when in 1971 Uganda claimed that Chinese Communist instructors had participated in guerrilla warfare that had been launched against Uganda from Tanzania, the Chinese charge d'affaires branded the charges an utterly groundless fabrication that gravely undermined relations between China and Uganda.¹¹²

The recent case of Cambodia illustrates the PRC's resort to the device of seeking to legitimize support to insurgents by taking advantage of the discretion which individual states enjoy in deciding whether and when to recognize the insurgents as the legitimate government.¹¹³ In 1970 Prince Sihanouk claimed that, following the military coup that deposed him, the PRC granted him a loan to finance his Peking-based government-in-exile and free weapons and transport facilities

¹¹⁰ *Chinese Embassy in Ghana Refutes Ghana's Slander*, U.S. CONSULATE GENERAL, HONG KONG, SURVEY OF THE CHINA MAINLAND PRESS, Mar. 23, 1966, at 22, 23.

¹¹¹ *Chinese Foreign Ministry Refutes Indian Government's Slanders*, PEKING REVIEW, Sept. 23, 1966, at 36.

¹¹² *Chinese Charge d'Affaires a.i. in Uganda Lodges Protest*, PEKING REVIEW, July 30, 1971, at 29. It is difficult, of course, for academic observers and the public to determine which of the many charges of Chinese intervention are well-grounded. In Africa, for example, "Peking was implicated in several insurgencies and attempted coups, as in Rwanda, Niger, Cameroon, and Zaire, which gained the Chinese a reputation for subversion." Ryan, *supra* note 98, at 9. Yet this hardly means that all such accusations, including Uganda's, are necessarily factual.

¹¹³ For a discussion of this device, see W. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW*, 265-66 (1964).

for the fight that his supporters have been waging in Cambodia. The Prince quoted Chairman Mao as having said, "We are not arms traffickers. We cannot sell you weapons. We can give them to you. As for transport, that's also free."¹¹⁴ Sihanouk subsequently signed an agreement with the PRC for providing free military aid to his regime.¹¹⁵ These obviously authorized revelations represent an exception to the usual Chinese practices—designed to insulate Peking from charges of international delinquency—of attempting to conceal the extension of military and economic aid to specific liberation struggles and denying accusations of having extended such aid. It should be noted, however, that the PRC had continued to recognize Sihanouk as the chief of the Cambodian state and that the Prince made his announcements only after the Chinese Government had formally recognized "The Royal Government of National Union Under the Leadership of the National United Front of Kampuchea" as the legal successor to the previous government of Cambodia.¹¹⁶ Thus China was aiding what it claimed to be the legitimate government at the latter's request, bringing the case, at least to Peking's satisfaction, within the traditional, if controversial, ambit of international law and state practice.¹¹⁷

One of the more tongue-in-cheek Chinese rejoinders to an accusation of intervention was made shortly after the Bandung Conference of 1955. At the conference the Prime Minister of Ceylon had proposed that the PRC call upon the Communist parties in Asian and African states to disband. The *People's Daily* responded: "By demanding that China call on Communist parties in the region to disband, the Ceylonese Prime Minister—who had voiced opposition to every form of outside interference—was inviting China to interfere in Ceylon's internal affairs." It stated that "[w]hen there are people in a country who believe in Communism, a Communist party will appear. This is an internal question of the country concerned."¹¹⁸ This expressed solicitude for the principle of non-intervention must have been wryly received by those states in which the Chinese Communist Party had been offering propaganda, indoctrination, military training, supplies

¹¹⁴ N.Y. Times, June 7, 1970, at 3, col. 4.

¹¹⁵ *Government of PRC and Royal Government of National Union of Cambodia Sign in Peking Agreement on Providing Gratuitous Military Aid by China to Cambodia*, U.S. CONSULATE GENERAL, HONG KONG, SURVEY OF THE CHINA MAINLAND PRESS, Aug. 26, 1970, at 79.

¹¹⁶ *Chinese Government Formally Recognizes Royal Government of National Union of Cambodia*, PEKING REVIEW, May 14, 1970, at 14; N.Y. Times, Mar. 20, 1970, at 14, col. 4.

¹¹⁷ See text accompanying note 9 *supra*. For discussion of China's premature recognition of the revolutionary Algerian regime, see J. HSIUNG, *supra* note 3, at 220-21.

¹¹⁸ N.Y. Times, Apr. 25, 1955, at 7, col. 1.

and other support to local Communist parties that were bent upon revolution.¹¹⁹

Peking's public endorsements of particular revolutionary movements have generally reflected tacit formal deference to the principle of non-intervention. None of the techniques of implicit endorsement—reprinting the policy statements of foreign revolutionary groups, issuing news reports about their activities or publishing maps that designate countries as sites of ongoing struggles—implicates the PRC officially. Moreover, as the leading study of the subject points out:

[E]xplicit endorsements usually are made in the name of either the Chinese people or the Chinese Communist Party. The Chinese government, as such, does not customarily endorse revolutions, since its formal activities with regard to foreign affairs are generally limited to relations with other governments, rather than with mass organizations or political parties.¹²⁰

It should be noted that since early 1959, even an endorsement by Mao Tse-tung has not constituted official support for revolution abroad, for at that time Mao gave up his post as head of state and has subsequently served only as chairman of the Party and as a deputy to the National People's Congress. Perhaps significantly, although many of the highest-ranking Chinese officials, as well as publicists, have frequently proclaimed the PRC's adherence to "the five principles of peaceful coexistence," and the state has bound itself to their observance on many occasions, Chairman Mao himself seldom appears to have advocated non-intervention. Often when he has referred to the principles of equality, mutual benefit and mutual respect for territorial integrity and sovereignty, he has been silent about non-intervention. At times, he has even coupled advocacy of the other principles with vague but broad exhortations to give active support to liberation struggles.¹²¹ Mao's statements contrast in their emphasis with those of the highest Soviet officials, such as Khrushchev, who have frequently endorsed non-intervention.

If in practice the PRC were consistently to take the position that state assistance to foreign wars of national liberation does not violate the principle of non-intervention, it might spare itself the tasks of

¹¹⁹ For example, see the summary of the complex relationship between the Chinese Communist Party and the Malayan Communist Party in the years 1949-1954 in S. FITZGERALD, *CHINA AND THE OVERSEAS CHINESE* 89-98 (1972). See also H. HINTON, *COMMUNIST CHINA IN WORLD POLITICS* 403-04 (1966); Ryan, *supra* note 98, at 2-7.

¹²⁰ P. VAN NISS, *supra* note 89, at 86-87, which also discusses exceptions.

¹²¹ See note 2 *supra*. For one of Mao's relatively rare endorsements of all five of the principles of peaceful coexistence, see Mao-tse-tung tung-chih-te chiang-hua [Comrade Mao Tse-tung's Talk], *People's Daily*, Nov. 7, 1957, at 1-2.

concealing its military and economic support for liberation struggles; of denying that it has extended this covert support; of structuring much of its public support for such struggles in ways that diminish the involvement of the government, as distinguished from the press, the Party, and the people; and of justifying in terms of traditional international law the support that the Chinese Government has publicly provided. Yet the PRC has thus far failed to adopt this straightforward, if highly controversial position, apparently because it recognizes that this position is unacceptable to most states and because it needs their cooperation not only in respecting the rule of non-intervention vis-à-vis China but also in pursuing many positive goals.

IX. CONCLUSION

As a result of this introductory survey, one wonders to what extent contemporary Chinese theory and practice relating to intervention are significantly different from what they were 2,500 years ago. Today's Chinese elite, like that of the feudal states of the pre-imperial era, endorses the general rule of non-intervention and adheres to it when convenient. Yet, like their Chou dynasty ancestors, the Chinese Communists find it politically expedient frequently to depart from the norm, they have developed ethical doctrines that preach the desirability of such departures, and, with the aid of their scholars, they have articulated specific legal rationalizations for most of those departures. Some of these contemporary rationalizations, such as those that justify intervention in self-defense or in behalf of the oppressed people of another state, had actual counterparts in ancient China. Nevertheless, despite the broad similarities and despite the fact that China's pre-imperial experience may in the nineteenth century have helped an historically conscious elite to understand the multi-state system of the West, that ancient Chinese experience does not seem to have influenced the PRC's view of intervention. Nor does the record suggest that the imperial Chinese tribute system has had a significant impact upon Peking's position.

This is not to say that historical and cultural factors have played no role in shaping contemporary Chinese attitudes towards intervention. These attitudes reflect not only China's current position as a nation-state but also the breakdown of the imperial tribute system and the consequent century of foreign domination. That in turn led to a preoccupation with China's defense, the adoption of a Marxist-Leninist world-outlook, the development of a successful revolutionary organization in semi-colonial conditions, and the specific importation

of the Soviet intellectual apparatus of international law. From all these materials new China's leaders have fashioned their own distinctive view of intervention. That view offers a sometimes distorted but often devastating attack upon the hypocrisy of the Western powers and, more recently, the USSR in formulating and applying the rules of the game.

Yet, at least for the present period, when it is unable to gain broad international acceptance of its legal justification of state support for foreign wars of national liberation, the PRC has itself proved no stranger to hypocrisy. It has not been candid about its military and economic aid to many liberation struggles. Despite its professed concern for the control of intervention, the norms that it has articulated are not susceptible of objective application. Nor has Peking shown interest in strengthening international institutions to which China and other states might surrender their present unilateral fact-finding and norm-applying powers in intervention-type situations.

What the PRC has done is to demonstrate its ability to play the dangerous game of intervention in international politics with the same facility as the other major players. It can tailor the facts and manipulate the rules to rationalize, at least to its own satisfaction, whatever position seems to be in the immediate interest of the Chinese state. When foreign military forces are introduced to help restore order at the request of the existing government, Peking can brand the action legitimate or illegitimate, according to its own perception of "the genuine desires" of the people. If it is a question of UN condemnation of regimes that engage in racial discrimination and suppress national self-determination, the PRC has no difficulty finding that article 2(7) of the Charter does not bar UN action in behalf of the people of South Africa but precludes it in behalf of the people of Tibet. China can lecture Britain about its obligation not to allow Hong Kong to become a base for hostile activities, while simultaneously offering sanctuary and support to guerrilla movements that threaten neighboring states. Despite its repeated pledges not to emulate the super-powers, the PRC has learned the fundamental lesson of super-power international law—it all depends on whose ox is gored.

Should one be depressed by this? Things could be worse. China's situation is changing in ways that are not devoid of hope for international progress. In his classic reformulation of the Maoist revolutionary credo, Lin Piao stated:

It is sheer day-dreaming for anyone to think that, since our revolution has been victorious, our national construction is forging ahead, our national wealth is increasing and our living

conditions are improving, we too will lose our revolutionary fighting will, abandon the cause of world revolution and discard Marxism-Leninism and proletarian internationalism.¹²²

But Lin Piao is no longer the heir apparent, and China now enjoys moderate leadership—for how long we cannot predict.

China's current moderation is likely to be encouraged by a number of factors. Prior to the Cultural Revolution, it should be recalled, the PRC, like imperial China vis-à-vis its tributaries, did not intervene in the affairs of regimes that accepted its legitimacy. The impetus behind Peking's support for wars of national liberation has been its anti-status quo orientation, and that in turn has derived in important part from the refusal of the United States and its satellites to recognize the PRC's legitimacy. Now, however, Peking has achieved its rightful place in the UN and is completing the process of establishing bilateral diplomatic relations with other states. This emergence from the twilight of the world community should nourish the modest degree of sensitivity that the PRC has already shown to charges of intervention, particularly when made by "Third World" states. It should also increase the benefits that can accrue to Peking from satisfactory intercourse with other governments rather than with groups that strive to overthrow them.¹²³

Both before and after the Cultural Revolution, Peking demonstrated that the interests of the Chinese state normally take precedence over the interests of world revolution. Peking's number one goal, apart from maintaining the regime in power, is the reintegration of Taiwan into China and the preservation of China's territorial integrity. The

¹²² Lin Piao, *supra* note 89, at 28.

¹²³ After these words were written, the author read the recent article by Ryan, *supra* note 98, which describes the "new order of priorities" that since the end of the Cultural Revolution has led the PRC to diminish its tangible support to revolutionary organizations. Ryan's summary, *supra* note 98, at 2, is worth quoting:

China's leaders, spurred by the sudden respectability and larger opportunities of membership in the United Nations, sought status, prestige and, above all, influence in the international arena—goals more likely to be achieved by courting the "independent and sovereign states" . . . than by fomenting "people's revolutionary armed struggles."

The Maoists continue to call for world revolution, but in a different framework. Peking has muted the "armed struggle" line in many areas, at least temporarily, to gain sympathy and support for its policy objectives. The Chinese Communist Party has not abandoned its claim to be the source of inspiration, repository of the true Marxist faith and most suitable model for the revolutionary forces of the world, nor has it ceased to provide verbal encouragement and round-the-clock exhortation via its extensive propaganda machinery to "revolutionary masses" outside China. Radio Peking, the New China News Agency (NCNA) and the Foreign Languages Press operate full tilt, but their output is designed more to secure immediate psychological and ideological benefits for China than to bring down non-Communist governments. Practically speaking, Chinese support for armed struggle by revolutionary groups has dwindled to what one observer has called "a few selected insurgencies."

moral that Bangla Desh must have driven home to the Chinese leaders is that the doctrine of liberation struggle may frustrate the attainment of that goal. In the months before Bangla Desh was established, the favorite Chinese slogan was: "Countries want independence, nations want liberation and the people want revolution."¹²⁴ The Chinese Nationalist government on Taiwan may prevent the people there from hearing this slogan, but its implications have undoubtedly not been lost upon their kinsmen and supporters abroad, especially after the precedent set by Bangla Desh. The people on Taiwan—and for that matter, the people of Tibet and other peripheral areas of China—can also invoke the historical example of the American war of independence in an effort to justify breaking away from China with foreign support. This situation may give the PRC, which has always been deeply concerned about its security, tangible incentive to reconsider the balance of advantage with respect to intervention in a swiftly changing, uncertain international environment.

Perhaps the PRC's entry into the UN will offer a way for Peking persuasively to reconcile support for selected foreign insurgencies with its proclaimed devotion to non-intervention. As has already been noted, in recent years the UN General Assembly has adopted a number of resolutions recommending that all states extend "moral and material assistance" to insurgent movements that seek to liberate the peoples of the white-dominated regimes of southern Africa;¹²⁵ and, following its entry into the UN, the PRC has enthusiastically joined in similar Assembly efforts.¹²⁶ Interestingly, in recent years also the PRC has ceased publicly supporting armed struggle in African states that are ruled by black regimes and has confined at least its public support for revolution in Africa to the areas of white rule.¹²⁷ This suggests the possibility, as China continues its current policy of mobilizing the middle-sized and smaller states against the superpowers, that not only in Africa but also on other continents the Assembly might authorize aiding those selective insurgencies that Peking wishes to foster. If this should prove to be the case, because of such collective legitimation the actions taken pursuant to the resolutions would presumably not constitute illegal intervention. By limiting its support for liberation struggles to those approved by the Assembly, China would thus be able to maintain its Maoist revolutionary credentials

¹²⁴ See, e.g., Speech by Ch'iao Kuan-hua, Chairman of Delegation of People's Republic of China, Nov. 15, 1971, *PEKING REVIEW*, Nov. 19, 1971, at 5, 6.

¹²⁵ See, e.g., note 11 *supra* & accompanying text.

¹²⁶ See, e.g., note 78 *supra* & accompanying text.

¹²⁷ See Ryan, *supra* note 98, at 8-9.

and to seek desired changes in selected countries while still not alienating most members of the world community.

Is it unrealistic to foresee such a turn of events? Much may depend on whether the superpowers, which have engaged in intervention on a scale never approached by the PRC, indicate a readiness to undertake a cooperative effort to curb intervention from all quarters, including their own. To an extent that we often fail to appreciate, Chinese attitudes toward international law represent reactions to the behavior of other states rather than initiatives. Until convinced that the other great powers are prepared to take the rules more seriously than in the past, the PRC too will continue to regard international law as an instrument of policy to be used when useful, to be adapted when desirable, and to be ignored when necessary.